

BY HAND DELIVERY

April 30, 2008

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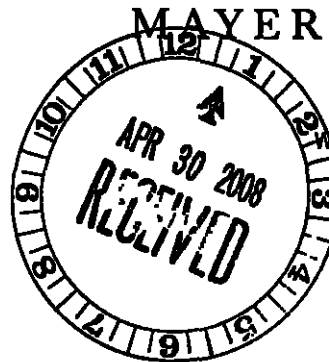
Melvin F Clemens
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Re Consolidated Rail Corporation—Abandonment
Exemption—In Hudson County, NJ, AB 167 (Sub-
No 1189X), and related cases

Ladies and Gentleman

This responds to the letter dated April 25, 2008, that Charles Montange filed in this proceeding on behalf of the City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Coalition, and Rails to Trails Conservancy (hereinafter "the City") Mr Montange's letter asserts that Conrail is attempting to flout the STB's abandonment authority with respect to the Harsimus Branch That is false By decision served August 9, 2007, in Docket No 34818, the Board held that the Harsimus Branch is a line of railroad subject to Federal abandonment regulation That decision is on appeal to the United States Circuit Court for the District of Columbia Circuit Conrail and SLH Properties are fully aware that none of the structures on the Harsimus Branch can be touched unless and until Conrail receives authority from the Board to abandon its right of way or the D C Circuit overturns the Board's August 9, 2007 decision

Mr Montange takes issue in his letter with the fact that Conrail is participating in a state court suit in which SLH Properties has obtained an order that requires Jersey City regulatory authorities to process SLH's development applications He suggests that this order, as well as



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Conrail's joinder in SLH's permit requests, demonstrates that Conrail is ignoring the Board's jurisdiction. Nothing could be further from the truth. Under New Jersey law, a developer is sensibly permitted to seek development permits, including demolition permits, in advance of having every permit and authority it needs to proceed. The permits the developer receives remain conditional until such time as the developer has finished obtaining all of the authorities—whether local, state, or federal—it needs for a project. When the City took the position that municipal agencies did not have to process SLH's applications until Conrail obtained abandonment authority from the Board, SLH asked the state court for an order directing the Jersey City regulatory authorities to process SLH's applications. The court issued that order. ***No one at any point suggested that if the municipal regulatory authorities issue those permits that SLH will be free to proceed with development of the properties absent the proper federal authority.*** The court's order simply holds as a matter of state law that the municipal agencies before which SLH has permits pending must process those permits without regard to whether Conrail has yet obtained the necessary federal authority.

It bears emphasizing that neither Conrail nor SLH Properties has *ever* flouted federal law regarding the Harsimus Branch. There is no evidence that any party believed until recently that abandonment authority was required for the line. As the Board itself found in its August 9, 2007 decision (slip op. at 5), the City began in 1984 to push Conrail to make the properties that made up the line available for redevelopment. The bridges connecting the Embankment properties were demolished with the encouragement and assistance of the City. Properties east of the Embankments were sold to a variety of developers, and subsequently improved with a number of retail, residential, and office projects. In the late 1990's the City devoted considerable attention and resources to the possibility of purchasing and redeveloping the Embankment properties, but the City lost interest after those properties were placed, over the City's and Conrail's objections, on the New Jersey State Register of Historic Places. In 2002, Conrail placed the properties up for bid. The City did not submit a bid or even an offer on the Embankment properties; the only bidder to meet Conrail's bid terms was SLH. Conrail continued to discuss possible acquisition of the properties by the City, without success. Neither the City nor anyone else claimed that acquisition and development of the property by the City, or by SLH, would require abandonment authority from the STB.

In July, 2005, Conrail closed the sale to SLH. It was only after the sale closed that the City claimed that abandonment authority was required from the Board for the Harsimus Branch. When the Board's declaratory order proceeding began in Docket No. 34818, both Conrail and SLH committed to the Board that they would not alter the remaining structures on the line, and they have not done so.

The City now says that it intends to condemn the Embankment properties once the Board has permitted Conrail to abandon its right of way. That appears to be the City's prerogative under state law, and one would have thought that expeditious abandonment of Conrail's right of way would have been in both Conrail's and the City's interest. However, Conrail's preliminary

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abandonment notices were met with a blizzard of objections from Mr Montange on behalf of the City, and other parties echoed some of the same objections. The only reason that Conrail determined to delay filing its Notice of Exemption was to make sure that its filing addressed the myriad concerns that had been raised. Mr Montange's suggestion that Conrail did so in order to bypass the Board's abandonment processes is completely without foundation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "RM Jenkins III", with a long horizontal flourish extending to the right.

Robert M. Jenkins III

Counsel for Consolidated Rail Corporation

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